

H

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation filed)
Against:)

LEONILO L. MALABED, M.D.)
Certificate No. A-16847)

No: 03-2000-114240

Respondent)

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on **February 27, 2003**

IT IS SO ORDERED **February 20, 2003**

By: _____

RONALD WENDER, M.D.

Chair - Panel B

Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 LYNNE K. DOMBROWSKI, State Bar No. 128080
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5578
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 03 2000 114240
OAH No. N2002-100253

13 LEONILLO L. MALABED, M.D.
145 Mountain Spring Avenue
15 San Francisco, CA 94114

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 Physician's and Surgeon's Certificate No.
A16847

Respondent:

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Ron Joseph (Complainant) is the Executive Director of the Medical Board
21 of California. He brought this action solely in his official capacity and is represented in this
22 matter by Bill Lockyer, Attorney General of the State of California, by Lynne K. Dombrowski,
23 Deputy Attorney General.

24 2. Leonilo L. Malabed, M.D. (Respondent) is represented in this proceeding
25 by attorney Christopher B. Marshall, whose address is Bonne, Bridges, Mueller, O'Keefe &
26 Nichols, 3699 Wilshire Boulevard, 10th Floor, Los Angeles, CA 90010.

27 3. On or about June 4, 1956, the Medical Board of California issued
28 Physician's and Surgeon's Certificate No. A16847 to Leonilo L. Malabed, M.D.. The Certificate

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 03 2000
2 114240 and will expire on September 30, 2004, unless renewed.

3 JURISDICTION

4 4. Accusation No. 03 2000 114240 was filed before the Division of Medical
5 Quality (Division) for the Medical Board of California, Department of Consumer Affairs, and is
6 currently pending against Respondent. The Accusation and all other statutorily required
7 documents were properly served on Respondent on June 28, 2002. Respondent timely filed his
8 Notice of Defense contesting the Accusation. A copy of Accusation No. 03 2000 114240 is
9 attached as Exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 03 2000 114240. Respondent also has
13 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Surrender of License and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
18 the right to present evidence and to testify on his own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent understands that the charges and allegations in Accusation
26 No. 03 2000 114240, if proven at a hearing, constitute cause for imposing discipline upon his
27 Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Division to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

11. This stipulation shall be subject to approval by the Division of Medical Quality. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Division regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Division shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Division may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A16847, issued to Respondent Leonilo L. Malabed, M.D. is surrendered and accepted by the Division of Medical Quality.

14. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Division's Decision and Order.

15. Respondent shall cause to be delivered to the Division both his wall and pocket license certificates on or before the effective date of the Decision and Order.

16. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Division shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 03 2000 114240 shall be deemed to be true, correct, and admitted by Respondent when the Division determines whether to grant or deny the petition.

17. Should Respondent ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 03 2000 114240 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

18. Respondent shall pay the Division its costs of investigation and enforcement in the amount of \$20,000.00 prior to issuance of a new or reinstated license.

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1 ACCEPTANCE


2 I have carefully read the above Stipulated Surrender of License and Order and
3 have fully discussed it with my attorney, Christopher B. Marshall. I understand the stipulation
4 and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this
5 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
6 be bound by the Decision and Order of the Division of Medical Quality, Medical Board of
7 California.

8
9 DATED: 1-11-03


LEONILO L. MALABED, M.D.
Respondent

11
12 I have read and fully discussed with Respondent Leonilo L. Malabed, M.D. the
13 terms and conditions and other matters contained in this Stipulated Surrender of License and
14 Order. I approve its form and content.

15
16 DATED: 1/13/03


CHRISTOPHER B. MARSHALL
Attorney for Respondent

18
19 ENDORSEMENT

20 The foregoing Stipulated Surrender of License and Order is hereby respectfully
21 submitted for consideration by the Division of Medical Quality, Medical Board of California of
22 the Department of Consumer Affairs.

23
24 DATED: 1/24/03

BILL LOCKYER, Attorney General
of the State of California


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27 
LYNNE K. DOMBROWSKI
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 03 2000 114240

1 BILL LOCKYER, Attorney General
of the State of California
2 LYNNE K. DOMBROWSKI, State Bar No. 128080
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5578
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 28, 2002
BY Samuel A. Parker

7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 03 2000 114240

14 LEONILLO L. MALABED, M.D.
15 145 Mountain Spring Avenue
16 San Francisco, CA 94114

ACCUSATION

17 Physician's and Surgeon's Certificate No. A16847

Respondent.

18 Complainant alleges:

PARTIES

19 1. Ron Joseph (Complainant) brings this Accusation solely in his official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs.

22 2. On or about June 4, 1956, the Medical Board of California issued
23 Physician's and Surgeon's Certificate Number A16847 to Leonilo L. Malabed, M.D.
24 (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times
25 relevant to the charges brought herein and will expire on September 30, 2002, unless renewed.
26
27
28

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality, Medical Board of California (Division), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code states, in pertinent part:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon."

6. Section 725 of the Code provides, in pertinent part, that repeated acts of clearly excessive prescribing constitutes unprofessional conduct.

7. Section 2238 of the Code provides that a violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

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1 8. Section 2241 of the Code states, in pertinent part:

2 "[T]he prescribing, selling, furnishing, giving away, or administering or offering
3 to prescribe, sell, furnish, give away, or administer any of the drugs or compounds
4 mentioned in Section 2239 to an addict or habitué constitutes unprofessional conduct."

5 9. Section 2242 of the Code state, in pertinent part:

6 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
7 4022 without a good faith prior examination and medical indication therefor,
8 constitutes unprofessional conduct."

9 10. Section 2262 of the Code provides, in relevant part, that altering or
10 modifying the medical records of any person with fraudulent intent or creating any false medical
11 record, with fraudulent intent constitutes unprofessional conduct.

12 11. Section 2266 of the Code states: "The failure of a physician and surgeon to
13 maintain adequate and accurate records relating to the provision of services to their patients
14 constitutes unprofessional conduct."

15 12. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
16 part:

17 "(a) Upon receipt of written notice from the Medical Board of California . . . that
18 a licensee's license has been placed on probation as a result of a disciplinary action, the
19 department may not reimburse any Medi-Cal claim for the type of surgical service or
20 invasive procedure that gave rise to the probation . . . that was performed by the licensee
21 on or after the effective date of probation and until the termination of all probationary
22 terms and conditions or until the probationary period has ended, whichever occurs first.
23 This section shall apply except in any case in which the relevant licensing board
24 determines that compelling circumstances warrant the continued reimbursement during
25 the probationary period of any Medi-Cal claim In such a case, the department shall
26 continue to reimburse the licensee for all procedures, except for those invasive or surgical
27 procedures for which the licensee was placed on probation."

28 13. The incidents in this Accusation occurred between about July 1995 and
29 about July 2000 while respondent was practicing as a physician in San Francisco, California.
30 The investigation of this matter was initiated after receipt of information from the Bureau of
31 Narcotics Enforcement, California Department of Justice, and the U.S. Drug Enforcement
32 Administration, Diversion Program, in or about September of 2000.

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1 COST RECOVERY

2 14. Section 125.3 of the Code provides, in pertinent part, that the Division
3 may request the administrative law judge to direct a licentiate found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 UNIFORM CONTROLLED SUBSTANCES ACT

7 15. Section 11007 of the California Health and Safety Code¹ defines a
8 "controlled substance", in pertinent part, as a drug included in Schedules I through V, inclusive,
9 pursuant to Health and Safety Code §§ 11054 through 11058.

10 16. Section 11056 of the Health and Safety Code sets forth Schedule III
11 controlled substances.

12 17. Section 11153 of the Health and Safety Code states, in part, that a
13 prescription for a controlled substance shall only be issued for a legitimate medical purpose by
14 an individual practitioner acting in the usual course of his or her professional practice.

15 18. Section 11156 of the Health and Safety Code provides that no person
16 shall prescribe for or administer, or dispense a controlled substance to an addict or habitual
17 user, or to any person representing himself as such, except as permitted by this division.

18 19. Section 11157 of the Health and Safety Code provides that: "No person
19 shall issue a prescription that is false or fictitious in any respect."

20 20. Section 11171 of the Health and Safety Code states that no person shall
21 prescribe, administer, or furnish a controlled substance except under the conditions and in the
22 manner provided by this division.

23 21. Section 11210 of the Health and Safety Code provides, in pertinent part,
24 that a physician shall prescribe, furnish, or administer controlled substances only in the
25 quantity and for the length of time as are reasonably necessary.

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27
28 1. Hereinafter referred to as the "Health and Safety Code".

1 CONTROLLED SUBSTANCES/DANGEROUS DRUGS INVOLVED

2 22. Vicodin (5.0 mg. tablets) or Vicodin ES (7.5 mg. tablets) (Hydrocodone
3 Bitartrate and Acetaminophen) is a Schedule III controlled substance and narcotic as defined by
4 section 11056(e) of the Health and Safety Code and is a dangerous drug, as defined by section
5 4022 of the Business and Professions Code. Vicodin/Vicodin ES is a semi-synthetic narcotic
6 analgesic and may have additive effects on central nervous system depression when taken in
7 combination with other narcotic analgesics, anti-psychotic or anti-anxiety drugs, alcohol or other
8 central nervous system depressants. Psychic dependence, physical dependence, and tolerance
9 may develop upon repeated administrations.

10 FIRST CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct, Gross Negligence and/or Repeated Negligent Acts,
12 and/or Excessive Prescribing re: Patient B.M.)

13 23. Respondent is subject to disciplinary action under sections 2234(b) and/or
14 (c), 725, 2238, and 2242 of the Business and Professions Code and sections 11153, 11171 and
15 11210 of the Health and Safety Code in that respondent is guilty of unprofessional conduct,
16 gross negligence and/or repeated negligent acts for his repeated acts of clearly excessive
17 prescribing of Vicodin ES to patient B.M. and/or his prescribing without a good faith prior
18 examination and medical indication therefor. The circumstances are detailed below.:

19 24. Starting in or about 1995, patient B.M. began to see respondent for relief
20 of ongoing back and neck problems. Patient B.M. saw respondent over a period of about 5 years.
21 The only physical examinations performed by respondent were the taking of the patient's blood
22 pressure and pulse. Respondent did not refer patient B.M. to any other physician for evaluation
23 or treatment.

24 25. From July 1995 until about November 1995, respondent prescribed #60
25 Vicodin ES (7.5 mg.) to patient B.M. on or about the following dates: 7/3, 8/24, 9/29, and 11/17,
26 for a total of approximately #240 Vicodin ES.

1 26. In or about 1996, respondent prescribed #60 Vicodin ES (7.5 mg.) to
2 patient B.M. on or about the following dates: 1/8, 2/29, 5/6, 6/6, 7/12, 8/2, 8/14, 9/9, 9/11, 10/24,
3 10/29, 11/18, 12/13, and 12/30, for a total of approximately #900 Vicodin ES.

4 27. On at least one occasion in 1996, respondent's prescriptions for Vicodin
5 ES for patient B.M. were filled in different pharmacies on the same day, clearly indicating that
6 more than one prescription for this drug had been issued for the same time and strongly
7 suggesting an attempt to conceal the fact of the full amount prescribed, as follows:

8 a. On or about 9/11/1996, patient B.M. filled a prescription of
9 respondent's for #60 Vicodin ES at a Rite-Aid Pharmacy and on 9/11/1996 re-filled a
10 prescription of respondent's for #60 Vicodin ES at Quincy Drugstore.

11 28. In or about 1997, respondent prescribed #60 Vicodin ES (7.5 mg.) to
12 patient B.M. on or about the following dates: 1/10, 2/11, 2/20, 3/12, 3/21, 5/2, 5/14, 6/11, 6/18,
13 8/1, 8/7, 8/21, 9/8, 10/6, 11/11, 11/18, and 12/29, and #100 Vicodin ES on 9/18, for a total of
14 approximately #1,120 Vicodin ES.

15 29. In or about 1998, respondent prescribed #60 Vicodin ES (7.5 mg.) to
16 patient B.M. on or about: 1/5, 2/5, 3/4, 4/1, 4/9, 5/22, 6/8, 7/7, 7/31, 8/31, 10/21, 11/5, and 12/9 and
17 #100 Vicodin ES on or about: 2/28, 3/28, 5/27, 8/13, 9/11, 10/21, 11/19, 12/22 (twice), and
18 12/30, for a total of approximately #1,780 Vicodin ES.

19 30. On at least two occasions in 1998, respondent's prescriptions of Vicodin
20 ES for patient B.M. were filled in different pharmacies on the same day, clearly indicating that
21 more than one prescription for this drug had been issued for the same time and strongly
22 suggesting an attempt to conceal the fact of the full amount prescribed, as follows:

23 a. On or about 10/21/1998, patient B.M. filled a prescription of
24 respondent's for #60 Vicodin ES at Embarcadero Center Pharmacy and filled a prescription of
25 respondent's for #100 Vicodin ES at an Albertson's Drugstore; and,

26 b. On or about 12/22/1998, patient B.M. filled two different
27 prescriptions of respondent's at a Walgreen's Pharmacy each for #100 Vicodin ES.
28

1 31. In or about 1999, respondent prescribed #60 Vicodin ES (7.5 mg.) to
2 patient B.M. on or about: 1/15, 3/10, 4/8, 4/30, 5/4, 8/6, 10/20, and 12/20; #50 Vicodin ES on
3 5/7; and #100 Vicodin ES on or about: 2/12, 3/19, 4/2, 4/23, 4/29, 5/5, 5/14, 5/21, 5/27, 6/2, 6/4,
4 6/11, 6/21, 6/25, 7/2, 7/15, 7/28, 7/30, 8/6, 8/27, 9/16, 9/22, 10/1, 10/9, 10/16, 10/23, 10/26,
5 10/31, 11/11, 11/18, 11/26, 12/11, and 12/17, for a total of approximately #3,830 Vicodin ES.

6 32. On several occasions in 1999, respondent's prescriptions of Vicodin ES
7 for patient B.M. were filled in different pharmacies within a few days of each other, clearly
8 indicating that more than one prescription for this drug had been issued for the same time and
9 strongly suggesting an attempt to conceal the fact of the full amount prescribed, as follows:

10 a. On or about 4/29/1999, patient B.M. filled respondent's
11 prescription for #100 Vicodin ES at a Rite-Aid Pharmacy. On or about 4/30/1999 patient filled a
12 prescription of respondent's for #60 Vicodin ES at Quincy Drugstore. On or about 5/4/1999
13 patient B.M. filled a prescription of respondent's for #60 Vicodin ES at Embarcadero Center
14 Pharmacy and on 5/5/1999 filled another prescription of respondent's for #100 Vicodin ES at a
15 Walgreen's Pharmacy, while on or about 5/7/1999, he filled respondent's prescription for #50
16 Vicodin ES at a Raley's Pharmacy;

17 b. On or about 6/2/1999, patient B.M. filled a prescription of
18 respondent's for #100 Vicodin ES at a Walgreen's Pharmacy and on 6/4/1999 filled another
19 prescription of respondent's for #100 Vicodin ES at a Rite-Aid Pharmacy;

20 c. On or 7/28/1999, patient B.M. filled a prescription of respondent's
21 for #100 Vicodin ES at a Walgreen's Pharmacy and on 7/30/1999 filled another prescription of
22 respondent's for #100 Vicodin ES at a Rite-Aid Pharmacy;

23 d. On or about 8/24/1999, patient B.M. filled respondent's
24 prescription for #60 Vicodin ES at Embarcadero Center Pharmacy and on 8/27/1999 filled
25 another prescription of respondent's for #100 Vicodin ES at a Smith's Pharmacy;

26 e. On or about 10/20/1999, patient B.M. filled a prescription of
27 respondent's for #60 Vicodin ES at Embarcadero Center Pharmacy and on or about 10/23/1999
28 filled another prescription of respondent's for #100 Vicodin ES at a Smith's Pharmacy, while on

1 or about 10/26/1999 he filled yet another prescription of respondent's for #100 Vicodin ES at a
2 Walgreen's Pharmacy; and,

3 f. On or about 12/17/1999, patient B.M. filled a prescription of
4 respondent's for #100 Vicodin ES at a Walgreen's Pharmacy while on or about 12/20/1999, he
5 filled another prescription of respondent's for #60 Vicodin ES at the Embarcadero Center
6 Pharmacy.

7 33. In or about 2000, respondent prescribed #60 Vicodin ES (7.5 mg.) to
8 patient B.M. on or about 1/28 and 3/6 and prescribed #100 Vicodin ES on or about 1/5, 1/13,
9 1/14, 2/1, 2/4, 2/10, 2/19, 3/1(twice), 3/10, 3/18(twice), 3/23, 4/8, 4/19, 5/5 (twice), 6/10, and
10 6/17, for a total of approximately #2,020 Vicodin ES for about the first six months of 2000.

11 34. On several occasions in 2000, respondent's prescriptions for Vicodin ES
12 for patient B.M. were filled in different pharmacies within a few days of each other, clearly
13 indicating that more than one prescription for this drug had been issued for the same time and
14 strongly suggesting an attempt to conceal the fact of the full amount prescribed, as follows:

15 a. On or about 1/13/2000, patient B.M. filled a prescription of
16 respondent's for #100 Vicodin ES at an Albertson's Pharmacy and on or about 1/14/2000 filled
17 another prescription of respondent's for #100 Vicodin ES at a ShopKo Pharmacy;

18 b. On or about 2/1/2000, patient B.M. filled a prescription of
19 respondent's for #100 Vicodin ES at a Walgreen's Pharmacy and on or about 2/4/2000 filled
20 another prescription of respondent's for #100 Vicodin ES at a ShopKo Pharmacy;

21 c. On or about 3/1/2000, patient B.M. filled a prescription of
22 respondent's for #100 Vicodin ES at a Walgreen's Pharmacy and on the same day filled a
23 prescription of respondent's for #100 Vicodin ES at a Safeway Pharmacy while on 3/6/2000 he
24 filled yet another prescription of respondent's for #60 Vicodin ES at the Embarcadero Center
25 Pharmacy;

26 d. On or about 3/18/2000, patient B.M. filled a prescription of
27 respondent's for #100 Vicodin ES at a Smith's Pharmacy and on 3/23/2000 filled another
28 prescription of respondent's for #100 Vicodin ES at an Albertson's Pharmacy; and,

1 e. On or about 5/5/2000, patient B.M. filled a prescription of
2 respondent's for #100 Vicodin ES at a Walgreen's Pharmacy and on the same day filled a
3 prescription of respondent's for #100 Vicodin ES at a Smith's Pharmacy.

4 35. In or about October 2000, patient B.M. was admitted to a drug
5 rehabilitation facility for treatment of his addiction to the Vicodin ES prescribed by respondent,
6 and by other health professionals.

7 36. Respondent failed to establish and enforce limits for this patient, through
8 appropriate counseling within a therapeutic relationship and by controlling and limiting the
9 amount of prescriptions and refills, to prevent patient diversion and/or excessive use.

10 37. Respondent failed to do a complete assessment of the patient's pain
11 condition, including referring to or consulting with specialists and exploring other alternatives
12 for treatment.

13 38. Respondent encouraged patient B.M. to provide names of other relatives
14 and family members for additional prescriptions of Vicodin E.S.. Patient B.M. gave respondent
15 the names of his wife, D.M., and his father-in-law, F.W., and respondent wrote prescriptions for
16 D.M. and F.W. as detailed below in paragraphs 42 through 51 and incorporated herein by
17 reference.

18 39. Respondent's medical records for patient B.M. are inadequate and
19 incomplete and it can not be determined from respondent's records what planning and progress,
20 if any, took place during treatment. Respondent failed to maintain adequate medical records of
21 his treatment of patient B.M. in that: (1) respondent failed to document a medical basis for not
22 utilizing therapeutic regimens commonly associated with the illnesses being treated; (2)
23 respondent failed to document direct observational data, such as medical examinations, treatment
24 planning and progress; and, (3) respondent failed to document the drugs and dosages prescribed
25 and the medical indications therefor and their effects, and whether the patient was taking
26 prescription drugs from other physicians.

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1 45. In or about 1997, respondent prescribed #60 Vicodin ES (7.5 mg.) to D.M.
2 on or about the following dates: 2/12, 2/19, 4/16, 6/30, 11/3, 11/14, 12/5, and 12/12, for a total of
3 approximately #480 Vicodin ES over about an eleven-month time period.

4 46. In or about 1998, respondent prescribed #60 Vicodin ES (7.5 mg.) to D.M.
5 on or about the following dates: 1/27, 3/12, 4/16, 4/28, 6/4, 6/19, 7/27, 10/15, 11/19, and 11/25,
6 for a total of approximately #600 Vicodin ES over about an eleven-month time period.

7 47. In or about 1999, respondent prescribed #60 Vicodin ES (7.5 mg.) to D.M.
8 on or about: 1/27, 2/8, 3/10, 8/19, 10/15, 10/30, and 12/3, and #100 Vicodin ES on or about:
9 2/12, 3/12, 4/14, 7/27, 11/26, 12/8, 12/24, for a total of approximately #1120 Vicodin ES.

10 48. In or about 2000, respondent prescribed #30 Vicodin ES (7.5 mg.) to D.M.
11 on or about 3/18, and #60 Vicodin ES on or about 8/17 and 9/20, and #100 Vicodin ES on or
12 about: 1/6 (twice), 1/25, 1/31, 2/19, 3/10, 3/18 (twice), 3/31, 4/9, 4/20, 5/5, 5/26, 7/7 (twice),
13 10/10, and 11/18, for a total of approximately #1850 Vicodin ES over about an eleven-month
14 time period.

15 49. On several occasions in 2000, respondent's prescriptions of Vicodin ES
16 for D.M. were filled in different pharmacies within a few days of each other, clearly indicating
17 that more than one prescription for this day had been issued for the same time and strongly
18 suggesting an attempt to conceal the fact of the full amount prescribed as follows:

19 a. On or about 1/6/2000, D.M. filled a prescription of respondent's
20 for #100 Vicodin ES at a Safeway Pharmacy and on or about the same day filled another
21 prescription of respondent's for #100 Vicodin ES at Don's Pharmacy;

22 b. On or about 3/18/2000, D.M. filled two prescriptions from
23 respondent, each for #100 Vicodin ES, along with another prescription for #30 Vicodin ES at
24 Don's Pharmacy; and,

25 c. On or about 7/7/2000, D.M. filled two prescriptions from
26 respondent, each for #100 Vicodin ES, at Don's Pharmacy.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Gross Negligence and/or Dishonest Acts/

3 Unlawful Prescribing re: Patient F.W.)

4 50. Respondent is subject to disciplinary action under sections 2234(b) and/or
5 (e), 2238, and 2242 and sections 11153, 11157, 11171 and 11210 of the Health and Safety Code
6 in that respondent is guilty of unprofessional conduct, gross negligence and/ or dishonest or
7 corrupt acts in that respondent has prescribed controlled substances without a good faith prior
8 examination and medical indication therefor and without a legitimate medical purpose. The
9 circumstances are detailed below.

10 51. On or about 2/3/1999, respondent issued a prescription for #100 Vicodin
11 ES to F.W., father-in-law to patient B.M., which was filled at a K-Mart Pharmacy. At the time
12 the prescription was filled, the address given for F.W. was patient B.M.'s San Francisco
13 residential address. The prescription written by respondent was obviously fraudulent and
14 intended for patient B.M. because F.W. had died on or about 5/24/1998.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct: Gross Negligence and/or Dishonest Acts/

17 Unlawful Prescribing re: Patients J.D. and M.D.)

18 52. Respondent is subject to disciplinary action under sections 2234(b) and/or
19 (e), 2238 and 2242 and sections 11153, 11157, 11171 and 11210 of the Health and Safety Code
20 in that respondent is guilty of unprofessional conduct, gross negligence and/ or dishonest or
21 corrupt acts in that respondent has prescribed controlled substances without a good faith prior
22 examination and medical indication therefor and without a legitimate medical purpose. The
23 circumstances are detailed below.

24 53. On or about 7/30/1998, respondent issued a prescription for #100 Vicodin
25 ES to a business client, who was an undercover federal agent, without performing a physical
26 examination and without a medical indication therefor. Respondent assisted the client in
27 developing a fictitious name, "J.D.", for the issued prescription and instructed him on what
28 reasons should be contrived to justify the prescription for Vicodin. Respondent telephoned in

1 the prescription for "J.D." to a local pharmacy. Respondent did not perform a physical
2 examination, kept no medical records for this transaction, and charged the client \$40 for the
3 prescription.

4 54. On or about 8/6/1998, "J.D." asked respondent for more Vicodin.
5 Respondent told "J.D." that he could only supply him with 100 Vicodin tablets a month and that,
6 for additional Vicodin, "J.D." would need to supply fictitious patient names. Respondent then
7 asked "J.D." for his mother's name and issued a prescription for #100 Vicodin ES in that name,
8 "M.D.". Respondent never met or examined M.D., has no medical records for M.D., and clearly
9 intended the prescription to be filled by and for his client "J.D.". Respondent telephoned in the
10 prescription for "M.D." to a local pharmacy, which "J.D." later picked up. "J.D." paid
11 respondent \$100 for the prescription.

12 SIXTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct, Gross Negligence and/or Dishonest Acts/
14 and/or Creating False Medical Records)

15 55. Respondent is subject to disciplinary action under sections 2234(b) and/or
16 (e) and 2262 of the Business and Professions Code and section 11157 of the Health and Safety
17 Code in that respondent is guilty of unprofessional conduct, gross negligence and/or dishonest or
18 corrupt acts for issuing false and/or fraudulent prescriptions for D.M., F.W., J.D. and M.D.. The
19 circumstances are detailed in the allegations of paragraphs 42 through 54 and are incorporated
20 herein by reference.

21 SEVENTH CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct, Gross Negligence and/or Dishonest Acts/
23 Failure to Maintain Adequate Medical Records)

24 56. Respondent is subject to disciplinary action under sections 2234(b) and/or
25 (e), 2262, and 2266 of the Business and Professions Code in that respondent is guilty of
26 unprofessional conduct, gross negligence and/or dishonest or corrupt acts for failing to maintain
27 adequate and accurate medical records of his treatments of patient B.M., including the type and
28 number of prescriptions issued, and/or for issuing prescriptions on or about the same day to be

1 filled at different pharmacies or in the names of D.M. or F.W. with the intent to hide the actual
2 amount of Vicodin ES prescribed to patient B.M.. The circumstances are detailed in the
3 allegations of paragraphs 23 through 39 and paragraphs 42 through 51, and are incorporated
4 herein by reference.

5 DISCIPLINE CONSIDERATIONS

6 57. To determine the degree of discipline, if any, to be imposed on
7 Respondent, Complainant alleges that on or about 8/27/2001 an Information was filed in a
8 criminal proceeding entitled *United States of America v. Leonilo Malabed* in U.S. District Court,
9 Northern District of California, San Francisco Division, Case Number CR 01 0314 MAG. On or
10 about 1/15/2002, respondent pleaded guilty and was convicted of a Class A misdemeanor for
11 violating 12 U.S.C. section 1956, failure to maintain records relating to currency transactions.
12 The underlying facts of this conviction arise from respondent's money-laundering operation of
13 illegal drug monies through a bank which he owned and which was uncovered through a federal
14 undercover investigation. Respondent was placed on probation for 3 years and ordered: to be
15 subject to 6 months of home confinement with electronic monitoring; to provide access to any
16 requested financial records; to pay a \$10,000 fine plus a \$25 special assessment fee; and, to
17 relinquish his DEA license to issue and/or write prescriptions for any and all controlled
18 substances that are regulated by the Drug Enforcement Administration.

19 PRAYER


20
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 23 1. Revoking or suspending Physician's and Surgeon's Certificate Number
24 A16847, issued to Leonilo L. Malabed, M.D.;
- 25 2. Revoking, suspending or denying approval of Leonilo L. Malabed, M.D.'s
26 authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 27
- 28

1 3. Ordering Leonilo L. Malabed, M.D. to pay the Division of Medical
2 Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on
3 probation, the costs of probation monitoring; and

4 4. Taking such other and further action as deemed necessary and proper.
5

6 DATE: June 28, 2002

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8 _____
9 RON JOSEPH
10 Executive Director
 Medical Board of California
 Department of Consumer Affairs
 State of California
 Complainant

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